Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ petition No. 22 of 2001 (S/B)
(Old No. 36138 of 2000)

Birbal Prasad Dubey S/o late R.J. Dubey,
Resident of Kamal Colony Sitarganj,
District Udham Singh Nagar.

…….. Petitioner

Versus

1. State of U.P. through Secretary, Rural Development Sachivalaya, Lucknow, U.P.,

2. The District Magistrate, Udham Singh Nagar,

3. The Joint Development Commissioner, Kumaon Mandal, Nainital.

4. The Chief Development Officer, Udham Singh Nagar.

5. The District Development Officer, Udham Singh Nagar.

……. Respondents.

Sri D.S. Patni, learned counsel for the petitioner
Sri K.P. Upadhyay, learned Standing Counsel for the State/ respondents.

Date: Feburary 28,2006.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandapl,J.

(Per: Hon'ble P.C.Verma, J.)

This petition has been filed by the petitioner seeking writ of certiorari for quashing the impugned order dated 15.4.1999 communicated to the petitioner by the respondent No. 2/ District Magistrate, Udham Singh Nagar through letter dated 10.6.99. The petitioner also seeks writ of mandamus commanding the respondents to

quash the disciplinary proceedings against him in respect of chargesheet dated 09.12.1997 pending if any and to pay Rs. 1,03,500/- illegally deducted from the retirement dues of the petitioner alongwith 18% pendente lite interest w.e.f. 30.6.1996. He also seeks writ of mandamus directing the respondents to fix his pension and to pay his full pension in proper way.

2. Brief facts of the case are that the petitioner has been posted and working as Block Development Officer and retired from service on 30.6.1996 as Block Development Officer, Block Sitarganj, District Udham Singh Nagar. The petitioner was served a show cause notice dated 08.5.1997 by the respondent No. 5, which he received on 13.5.1997, making allegations that beneficiaries of construction of houses of Indira Avas Yojna as also construction of Sauchalaya have not been paid the amounts directly, rather they have been paid by cross cheques through Village Labour Workers who were having charge of different villages for onward payment for construction of said houses and Sauchalaya. In the said show cause notice it was also alleged that the Village Labour Workers have not properly utilized the amount and required numbers of houses and Sauchalaya were not built in. the said show cause notice was duly replied by the petitioner. The respondent No.4/Chief Development Officer, Udham Singh Nagar lodged a first information report (F.I.R.) against the petitioner on 29.08.1997 under Sections 409 & 420 of the Indian Penal Code in the concerned Police Station. In the said report it was stated that separate F.I.Rs. have been lodged against all the seven Village Labour Workers who have been paid the disputed amount through cheques.

During the pendency of the criminal proceeding in view of F.I.R. dated 29.8.1997 the respondents issued chargesheet to the petitioner on 29.12.1997. The petitioner replied the chargesheet , vide his letter dated 03.02.1998 denying all the charges levelled against him. The petitioner was discharged by the Chief Judicial Magistrate, Udham Singh Nagar in the said Criminal Case No. 306 of 1998 on 17.2.1999 by recording its finding that no charge is made out against the petitioner. Thereafter the petitioner was served inquiry report by the respondents requiring him to show cause within 14 days. The petitioner replied the said show cause notice on 01.7.1999 stating that the inquiry report cannot be relied and further all the charges have wrongly been levelled against him. The Government on 15.4.1999 itself have taken a decision to realize Rs. 1,03,500/- from the retirement dues of the petitioner and remaining amount from four Village Labour Workers @ Rs. 25,875/- each and said order was communicated to the petitioner by the District Magistrate on 10.6.1999. The said amount of Rs. 1,03,500/- has been deducted from the dues of the petitioner.

3. In the counter affidavit filed by the respondents it has been alleged that on 06.05.1997 the District Development Officer on the direction of the District Magistrate on physical verification found that there have been gross irregularities in construction of 201 houses and lavatories under the scheme on Indira Avas Yojna and also in making payment to the beneficiaries of the Scheme. It has also been denied in the counter affidavit that the petitioner was not afforded any opportunity of being heard rather he was afforded

sufficient opportunity to put his case. It has also been alleged that on the request of the District Magistrate to the Government, the disciplinary inquiry was entrusted to the joint Development Commissioner, Kumaon Division, Nainital who after issuing chargesheet to the petitioner submitted his report to the Government. The Inquiry Officer also found gross financial irregularities in construction of houses and lavatories under the Indira Avas Yojna and also in making payment to the beneficiaries of the Scheme. On the basis of said report the Government issued direction to the District Magistrate, Udham Singh Nagar for recovery of the amount from the petitioner as well as the concerned Village Labour Workers.

4. We have heard the learned counsel for the parties and perused the record. The main contention of the learned counsel for the petitioner is that it would be unjust and unfair if the findings recorded in departmental proceedings are allowed to stand in view of law laid down by the Apex Court in the case of **Capt. M. Paul Anthony versus Bharat Gold Mines Ltd. and another,** reported in **(1999) 3 Supreme Court Cases, 679.** The Hon'ble Apex Court in the said case held that once criminal case and disciplinary proceedings have been initiated on same charges, arising out of same evidence and if criminal case is decided and alleged accused has been discharged and acquitted, in such situation it would be unjust, unfair and rather oppressive to allow the findings recorded in departmental proceedings to stand. The learned counsel for the petitioner further contended that the allegations made against the petitioner in chargesheet and in first

information report are the same and criminal case has already been decided and the petitioner has been discharged as such any irrelevant findings of disciplinary proceeding cannot be allowed to stand or survive. Further the order dated 15.4.1999 followed by consequential order dated 10.6.1999 passed by the District Magistrate to recover the amount of Rs. 1,03,500/- from the retrial dues of the petitioner is wholly illegal and without jurisdiction.

5. It is to be seen that the case law relied by the learned counsel for the petitioner is to be applied in this case or not. The facts of the case relied by the learned counsel for the petitioner are totally different to the facts of the present case and the case law relied is not applicable in this case. The petitioner himself stated in Para-6 of the writ petition that the show cause notice dated 08.5.1997 issued by he respondent No. 5 was duly replied by him and it was admitted in it that some irregularities have been committed for not paying amount directly to the individual and has been paid by cross cheques through Village Labour Workers to get it invested in group account maintain in the name of group Incharge and Village Labour Workers and it was done only to avoid misuse of money. The petitioner also stated in the writ petition that he replied the chargesheet served to him through his letter dated 03.02.1998 denying all the charge levelled against him. In view of all this, the petitioner is not allowed to reiterate that he was not afforded any opportunity of hearing during the course of preliminary inquiry and disciplinary inquiry. At both occasions the Inquiry Officers found that gross irregularities have been committed in construction of

houses and lavatories under the Indira Avas Yojna and the payment was not made according to the Government Order No.2896/38-5-95, dated 29.9.1995 and the delinquent officer has violated the provisions made in the aforesaid Govt. Order. It is clear from the record that the petitioner misappropriated the Government money and sufficient opportunity has been provided to the petitioner to defend his case during the course of inquiry. We find no force in the contentions raised by the learned counsel for the petitioner.

6. The Government, on the basis of report submitted by the Inquiry Officer in disciplinary inquiry against the petitioner, issued direction to the District Magistrate to recover the fifty per cent of the amount so misappropriated from the retirement dues of the petitioner and fifty per cent from the other concerned Village Labour Worker. The respondents in the counter affidavit stated that the amount of Rs. 2,07,000/- have been realized from the petitioner as well as other concerned Village Labour Workers and deposited in District Treasury.

7. In view of above discussion, we are not inclined to allow the writ petition and it is dismissed. No order as to costs.

(B.C.Kandpal, J.) **(P.C.Verma,J)**
28.02.2006 **28.02.2006**

P. Singh